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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL For FY 2005

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT	(\$)	1,520.00
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Complete if Known

Application Number	10/750,540
Filing Date	December 31, 2003
First Named Inventor	Richard F. Gladney
Examiner Name	F. C. Conley
Art Unit	3673
Attorney Docket No.	SMCY-P02-099

METHOD OF PAYMENT (check all that apply)

Check Credit Card Money Order None Other (please identify): _____

Deposit Account Deposit Account Number: 18-1945 Deposit Account Name: Fish & Neave IP Group, Ropes & Gray LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

<input checked="" type="checkbox"/> Charge fee(s) indicated below	<input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee
<input checked="" type="checkbox"/> Charge any additional fee(s) or underpayment of fee(s) under 37 CFR 1.16 and 1.17	<input checked="" type="checkbox"/> Credit any overpayments

FEE CALCULATION**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)

Fee (\$)	Small Entity Fee (\$)
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50 25

Each independent claim over 3 (including Reissues)

200 100

Multiple dependent claims

360 180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- =	x	=	

Multiple Dependent Claims	
Fee (\$)	Fee Paid (\$)

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- =	x	=	

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/50	(round up to a whole number) x	=	

Fees Paid (\$)

1020.00

4. OTHER FEE(S)

1253/2253: Extension for response within third month

500.00

Other (e.g., late filing surcharge): 1401 Notice of appeal

SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	40,256	Telephone	(617) 951-7681
Name (Print/Type)	Wolfgang E. Stutius	Date	October 6, 2006		

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV521706340US on the date shown below in an envelope addressed to:
MS AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: October 6, 2006

Signature: (Lise Ann Ruggeri)



Doc Code: AP.PRE.REQ

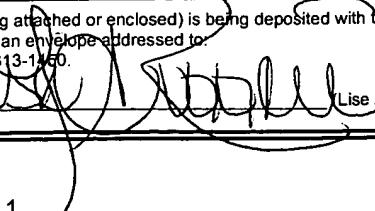
PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx
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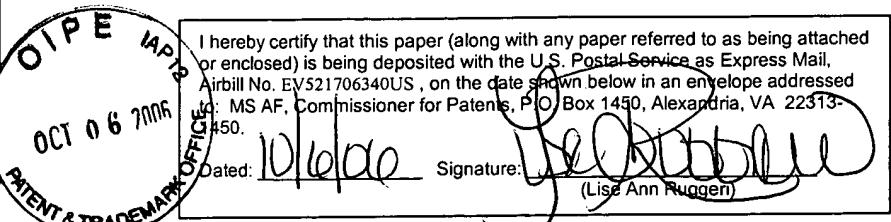
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) SMCY-P02-099
		Application Number 10/750,540
		Filed December 31, 2003
		First Named Inventor Richard F. Gladney
		Art Unit 3673
		Examiner F. C. Conley
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>		
<p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>40,256</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> <p> Signature Wolfgang E. Stutius Typed or printed name</p> <p>(617) 951-7681 Telephone number October 6, 2006 Date</p>		
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>		
<p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>		

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV521706340US, on the date shown below, in an envelope addressed to:
MS AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: October 6, 2006Signature: 

(Lise Ann Ruggeri)



Docket No.: SMCY-P02-099
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Richard F. Gladney

Application No.: 10/750,540

Confirmation No.: 5566

Filed: December 31, 2003

Art Unit: 3673

For: METHODS FOR MANUFACTURING
ENCASED MATTRESSES

Examiner: F. C. Conley

PRE-APPEAL BRIEF REASONS FOR REVIEW

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

INTRODUCTORY COMMENTS

Prior to proceeding with the full appeals process, Applicant respectfully requests a panel review of the pending rejections of claims 14 – 28 in the final Office Action, dated April 6, 2006, in view of the Remarks below and in conjunction with the Notice of Appeal filed concurrently with this Request.

A Petition for Extension of Time is filed concurrently herewith.

Remarks begin on page 2 of this paper.

REMARKS

The application includes 21 claims. To expedite the appeal, claims 29 – 34 are canceled herewith. Of the remaining claims 14 – 28, claims 14 and 16 are independent.

Claim 14 is directed to a mattress that includes an enclosure having a substantially rigid bottom panel and a sidewall forming a cavity, in which an innercore is placed. The innercore is joined to the bottom panel by an adhesive only along the sidewall, with a remaining portion of the bottom surface being unattached to the bottom panel.

Claim 16 recites subject matter similar to that of claim 14, reciting specific groups of materials for the platform.

Claims 14 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over US patent No. 5,065,485 to Zocco.

For an office action to establish a prima facie case of obviousness against a claim, the prior art reference or references used to form the rejection must, either alone or in combination, teach or suggest all the claim limitations. MPEP § 2143. The cited reference, however, fails to teach or suggest all of the limitations of independent claims 14 and 16.

While Applicant concedes that Zocco discloses a perimeter sidewall joined to the bottom panel/platform and defining an interior cavity, and an innercore disposed within the cavity, Applicant must respectfully disagree with the Examiner's two other assertions, namely that Zocco discloses a substantially rigid bottom panel (claim 14), and that "a portion of the bottom surface of the innercore is joined to the bottom panel by an adhesive in a region proximate to the perimeter sidewall, with a remaining portion of the bottom surface being unattached to the bottom panel," as recited in independent claim 14, and with similar language in independent claim 16.

Regarding the alleged disclosure by Zocco of a substantially rigid bottom panel, Zocco describes his innerspring mattress cover as follows:

Bottom (10) and top (11) panels are made of the same density foam. The frame (1), which is preferably made of higher density foam than the top (11) and bottom (10) panels, holds components of the invention within the frame (1) during assembly of the device, and also gives a person sleeping on the enclosed innerspring

mattress subassembly (100) complete edge support, and 100% sleeping surface edge support.

Since the bottom (10) (and likewise the top (11)) are made of a lower density foam, they cannot be considered as being "substantially rigid", as recited in line 2 of claim 1.

Regarding the alleged attachment of the innercore to the bottom panel/platform, Zocco discloses in col. 3, line 64, to col. 4, line 10, of the '485 patent:

A filling material (3) is then laid into the opening (2) in the frame. The filling material (3) may be made of any common mattress filling material, such as cotton, foam, poly-foam, wool or other fibers. The first layer of filling material (3) may be glued to the inside surface of the bottom panel (10). Either one or several layers of filling material may be used.

After the filling material (3) is placed inside of the frame (1), an innerspring insulator (4) is placed upon the filling material (3). The insulator (4) layer may be made of any common mattress insulator material, such as sisal, coconut fiber, burlap, resin-treated pads, or similar material. The insulator (4) prevents the filling material (3) from falling into the mattress spring (5) after the device has been assembled.

Zocco glues the insulator (3) to the top (10) and bottom (11) panels. Zocco states explicitly (col. 4, lines 12 – 13; and also col. 6, lines 17 – 18) that "[a]fter the insulator (4) is placed inside of the frame (1), an innerspring (5) is placed inside of the frame, centered within the frame."

{Emphasis added} Accordingly, Zocco does not disclose or suggest gluing the innercore mattress subassembly (100) to the bottom panel/platform or to anything else.

Zocco further discloses (col. 6, lines 60 – 63) as an alternative approach that "[a]n enclosed innerspring mattress of essentially the character of the preferred embodiment can be constructed without gluing of the filling material to the top and bottom panels." This further demonstrates that Zocco does not attach the innercore mattress subassembly with an adhesive.

Zocco therefore fails to disclose that the innercore is joined to the bottom panel by an adhesive. Only the insulator (3) and possibly the filling material (4) are joined to the bottom panel by an adhesive, while the innercore simply placed on top of the insulator/filling material.

The Office Action further states that applying the adhesive in a specific pattern would be an obvious modification, as would be application of an adhesive in a region proximate to the perimeter of the side wall with a remaining portion of the bottom surface being unattached to the bottom panel.

U.S. Patent 5,040,255 to Barber, now applied in conjunction with Tocco against 15 and 24, was previously cited in the Office Action dated October 17, 2005, against original claims 14 – 28. Barber states: “Glue or adhesive is applied at location 50 and 52, on the bottom surface of insulator 22 and the top surface of insulator 20 to maintain the relative position of springs 30 and assembly 18.” (col. 2, lines 15-41). Barber’s string of encased springs or spring casing assembly 18 is joined by an adhesive to the interior of the cavity. (col. 1, lines 35-39). Barber leaves no doubt that the entire surface of the top side of insulation piece 20 is coated with an adhesive.

To provide support for the springs and maintain the relative position of springs in the cavity, Barber needs to attach substantially all the spring to the bottom of the cavity. Attaching the springs in the cavity only along the perimeter would render Barber’s invention so modified unsatisfactory for its intended purpose, so there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)

The specific pattern recited in claims 14 and 16 was carefully selected by the inventors to replace the conventional attachment of the innerspring unit to a lower border wire which is then joined to the support layer. (see paragraph [0007] of the originally filed specification).

"To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

None of the references expressly or impliedly suggest applying the glue over less than the entire surface or in a specific pattern. Moreover, the Examiner fails to present a convincing line of reasoning as to why the artisan would have considered it obvious to apply the glue in the specific claimed pattern in light of the teachings of the references.

Claims 14 and 16 are therefore patentable over the references of record.

Application No. 10/750,540
Amendment dated October 6, 2006
After Final Office Action of April 6, 2006

Docket No.: SMCY-P02-099

Claims 15 and 20 – 28 which depend from independent claim 14, and claims 17 – 19, which depend from independent claim 16, are therefore also patentable for at least the reasons that claims 14 and 16 are patentable.

Thus, Applicant requests reconsideration and withdrawal of the §103 rejections of claims 14 – 28.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-1945, under Order No. SMCY-P02-099 from which the undersigned is authorized to draw.

Dated: October 6, 2006

Respectfully submitted,

By 
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